IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

RFC, Churu v. Bhanwarlal & Anr.

S.B.CIVIL WRIT PETITION NO.105/1996
under Article 226 of the Constitution of India.

Date of Order : 19th November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Dr. Rakesh Sinha for Mrs. Pratishtha Dave, for the petitioner.
Mr. R.S.Saluja, for the respondent.

BY THE COURT :

By this petition for writ a challenge is given to the award dated 7.11.1994 passed by Labour Court, Bikaner. By the award impugned learned Labour Court while holding retrenchment of respondent Bhanwarlal illegal directed the petitioner to reinstate him in service with full back wages with continuity in services.

Respondent Bhanwarlal was engaged as Chowkidar to keep watch over an industrial unit which was taken over by the Rajasthan Financial Corporation under Section 29 of the Rajasthan Financial

Corporation Act. Shri Bhanwarlal was employed as Chowkidar on 10.9.1987. He raised an industrial dispute that his services were erroneously retrenched w.e.f. 1.9.1988. The dispute ultimately resulted into the award impugned dated 7.11.1994.

While giving challenge to the award impugned it is contended by counsel for the petitioner that in view of judgment of Hon'ble Supreme Court in the case of Branch Manager, State Bank of Hyderabad v. Abdul Raheem and another, reported in (2001)10 SCC 615, there was no relationship of master and servant between the petitioner and respondent Bhanwarlal.

Per contra, it is stated by counsel for respondent Bhanwarlal that in view of the fact that the respondent was employed to execute a contract, therefore, he was a workman as defined under Section 2 (s) of the Industrial Disputes Act, 1947 (Rajasthan Amendment) (hereinafter referred to as “the Act of 1947”) and, therefore, relationship of master and servant existed between the petitioner and the respondent. The employer, therefore, was under obligation to adhere the provisions of Section 25-F of the Act of 1947 before retrenching workman (respondent Bhanwarlal).

Heard counsel for the parties.

It is true that under Section 2(s) (Rajasthan Amendment) of the Act of 1947 a person employed by contractor to execute the contract is a workman but in the present case the petitioner was neither employed by contractor nor he was employed for execution of contract. Respondent Bhanwarlal was engaged as Chowkidar in the industrial unit which was taken over by the Rajasthan Financial Corporation under Section 29 of the Rajasthan Financial Corporation Act. Hon'ble Supreme Court in the case of Branch Manager, State Bank of Hyderabad v. Abdul Raheem and another (supra) held that where a person is employed as a watchman to make watch over the goods hypothecated to bank, the relationship of master and workman cannot be sustained. The relevant portion of the judgment referred above is abstracted as under:-

> "Thus the Tribunal passed an award reinstating the respondent in service of the appellant with continuity of service and back wages. When the matter was carried in a writ petition and thereafter in a writ appeal unsuccessfully, the findings recorded by the Tribunal stood confirmed. The fact that the goods had been hypothecated with the Bank and they needed to be appropriately taken care of is not in dispute. However, such arrangement had to be made by the owner of the goods and which, in fact, he did. Though, it is possible that the Bank Manager may have recommended such a person does not by itself alter the situation that the watchman concerned would become the employee

> of the Bank and not that of the loanee. The recommendation made by the Manager to the Regional Manager will not by itself conclude the question whether there is any relationship of master and servant at all. Maybe out of sympathetic consideration the Branch Manager might have recommended his case to the Regional Manager. In this situation we find there is no justification for the Tribunal to come to the conclusion as it did to hold that there was relationship of employer and workman.
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> In this appeal the only contention urged on behalf of the appellant is as set forth above. We have come to the conclusion that the finding reached by the Tribunal that there is relationship of master and workman cannot be sustained. Therefore, we set aside the award made by the Tribunal, the order of the High Court in the writ proceedings initiated against the award and dismiss the claim and the dispute raised by the respondent. The appeal is allowed accordingly."

In view of the judgment of Hon'ble Supreme Court in the case of Branch Manager, State Bank of Hyderabad v. Abdul Raheem and another (supra) the Labour Court erred while treating respondent Bhanwarlal as a workman employed with the Rajasthan Financial Corporation.

In view of it the award impugned is declared illegal and same is quashed. However, if the

petitioner in future requires services of any person as a watchman to keep watch of any property or goods acquired by it under Section 29, then the priority be given to respondent Bhanwarlal to work as a watchman.

With these observations the writ petition is disposed of.

(GOVIND MATHUR),J.

kkm/ps.